Supreme Court, U.S.
FILED

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No

In the

Supreme Court of the United States

RAHUL SINGH,

Petitioner,

v.

CHARLES REED, DAVID T. HAYHURST, JEREMY GOLDEN, JOEL C. GOLDEN, NANCY A. MARLIN, STEPHEN WEBER, SUSAN WESTOVER,

Respondents.

On Petition For Writ Of Certiorari
To The Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL APPENDIX

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Filed 11/13/07

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAHUL SINGH,
Plaintiff,

CASE NO. 07-CV-1615
(DMS-BLM)

vs.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

ALEX MCDONALD,
CHARLES REED,
CYNTHIA AARON,
DAVID T. HAYHURST,
EDWARD G. BROWN,
JAMES MCINTYRE,
JEREMY GOLDEN,
JODI L. CLEESATTLE,
JOEL C. GOLDEN,
NANCY A. MARLIN,
PATRICIA COWETT,
RICHARD STRAUSS,
STEPHEN WEBER,
SUSAN WESTOVER,
Defendants.

Pending before the Court are two motions to dismiss. The first motion is brought by Defendants Edmund G. Brown, Jr., the Attorney General of California, and Jodi L. Cleesattle, a Deputy Attorney General ("AG Defendants"). The second motion is brought by Judges Richard Strauss and Patricia Cowett of the Superior Court of California, County of

San Diego; and Justices Alex McDonald, Cynthia Aaron and James McIntyre of the California Court of Appeal, Fourth District, Division One ("Judicial Defendants"). The matter was argued on November 2, 2007, at which time Plaintiff appeared *pro se* and Jodi Cleesattle appeared on behalf of the AG Defendants. The Judicial Defendants submitted their arguments on the briefs. Having carefully reviewed the matter, the Court grants both motions and dismisses the action with prejudice as to these Defendants.

I.
BACKGROUND[1]

On October 13, 2004, Plaintiff filed a lawsuit against the Board of Trustees of the California State University in San Diego Superior Court ("*Singh I*"). Judge Cowett was assigned to the case. Plaintiff alleged he was denied tenure and promotion in his tenure track position at the University in retaliation for complaining about gender discrimination against an applicant in his department. (AG Defendants' Request for Judicial Notice, Ex. A). On October 13, 2005, Plaintiff signed an agreement settling all claims with the University. *(Id.* at Ex. C). Despite Plaintiffs' protestations, on December 23, 2005, Judge Cowett granted the University's motion to enforce that agreement, *(Id.* at Ex. D), and entered judgment. *(Id.* at Exs. F and G).

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[1] Pursuant to Rule 201 of the Federal Rules of Evidence, the Court takes judicial notice of all records in *Singh I* and *Singh II* submitted by the AG Defendants.

On February 15, 2006, Plaintiff appealed the judgment. *(Id.* at Ex. H). He submitted both an appellate brief and a document entitled, "Appellant Requesting Court Order to Catch Fraud Upon the Court." *(Id.* at Exs. I and J). The latter document was returned unfiled. *(Id.* at Ex. K). Justices McDonald, McIntyre, and Aaron heard the appeal, and on April 17, 2007, the panel affirmed the trial court's judgment. *(Id.* at Ex. L). Plaintiff thereafter filed a petition for rehearing, which was denied *(Id.* at Ex. M), as was his petition for review in the California Supreme Court. *(Id.* at Ex. O).

On February 21, 2007, while his appeal was pending, Plaintiff filed a second action against the Board of Trustees of the California State University, Stephen L. Weber, Nancy A. Marlin, and David T. Hayhurst. ("*Singh II*") *(Id.* at Ex. Q). The second action repeated the allegations of the first, and was assigned to Judge Strauss. On May 23, 2007, the Attorney General's Office associated as co-counsel for the defendants in *Singh II*, *(Id.* at Ex. R), and thereafter moved for judgment on the pleadings. The motion was granted on grounds that the claims were barred by (a) the doctrine of *res judicata*, and (b) the parties' underlying settlement agreement and release. *(Id.* at Exs. S and T).

On August 14, 2007, Plaintiff filed the instant action with this Court alleging misconduct by the moving Defendants, perpetrated during the litigation of *Singh I* and *Singh II*. ("Complaint," Doc. 1). The AG Defendants argue Plaintiff's instant Complaint is deficient as a matter of law because: (1) they are immune from claims arising out actions taken by

them in the course of litigation; and (2) Plaintiff fails to sufficiently allege any wrongdoing. The Judicial Defendants argue dismissal is appropriate because the present action is barred by: (1) the Eleventh Amendment to the United States Constitution; (2) judicial immunity; and (3) the *Rooker-Feldman* doctrine.

II.
DISCUSSION

A Rule 12(b)(6) dismissal is proper where it is apparent a plaintiff cannot prove facts sufficient to support his claim for relief. *Gilligan v. Jamco Development Corp.*, 108 F.3d 246, 284 (9th Cir. 1997). In reviewing the complaint, the court construes allegations of material fact in the light most favorable to the nonmoving party. *Id.*

Attorneys employed by the Attorney General's office are absolutely immune from claims arising out of actions they take while discharging their litigation-related duties. *Bly-Magee v. California*, 236 F.3d 1014, 1018 (9th Cir. 2001); *Yoonessi v. Albany Medical Center*, 352 F. Supp. 2d 1096, 1103 (C.D. Cal. 2005). For example, in *Yoonessi*, where plaintiff's only allegations involved fraudulent statements that defendant purportedly made while representing the Medical Board of California in legal proceedings before two California courts, the deputy attorney general defendant was held to be absolutely immune from plaintiff's suit. 352 F. Supp. 2d at 1103-04. Similarly, judges are absolutely immune from suits for money damages arising out of acts performed in their official capacities. *Mireles v. Waco*,

502 U.S. 9, 9-10 (1991) (per curiam); *Dennis v. Sparks*, 449 U.S 24, 27 (1980). Judicial immunity encompasses injurious legal error, *Cleavinger v. Saxner*, 474 U.S. 193, 199-200 (1985); bad faith and malice, *Mireles*, 502 U.S. at 11; and the commission of grave procedural errors. *In re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002), *citing Stump v. Sparkman*, 435 U.S. 349, 359 (1978).

Plaintiff, citing *Beard v. Udall*, 648 F.2d 1264 (9th Cir. 1981), asserts judicial immunity does not apply "if a judge connives with one of the parties to predetermine the outcome of a judicial proceeding." (Opp. at 6). *Beard*, however, has been overruled. Sitting *en banc*, the Ninth Circuit held: "allegations that a conspiracy produced a certain decision should no more pierce the actor's immunity than allegations of bad faith, personal interest or outright malevolence." *Ashelman v. Pope*, 793 F.2d 1072, 1077-78 (9th Cir. 1986) *(en banc)*. Plaintiff also argues that immunity does not extend to criminal cases. (Opp. at 5). But that argument does not assist Plaintiff, as this is a *civil* case.

The essence of Plaintiff's claims are based on the following allegations: (1) the moving Defendants were aware that a University attorney "fraudulently accused" another employee of destroying case files relevant to *Singh I* and *Singh II*. (Compl. ¶ 33); (2) Judge Cowett "ruled pages and pages of simple pleadings and evidence submitted in support of Plaintiff's opposition to Defendants' summary judgment motion as inadmissible." *(Id.* ¶ 35); (3) Judge Cowett "granted Provost [of the University] summary judgment and decided plaintiff owed

Provost $5000.00 dollars." *(Id.)*; (4) "Justices of the California Court of Appeal prevented access to the courts in Plaintiff's Title VII case by ordering the clerk not to file Plaintiff's March 1, 2007 pleadings requesting court order to catch Fraud Upon the Court." *(Id.* ¶ 62); (5) Defendant Cleesattle did not submit to the court a copy of a red handbook allegedly produced by Plaintiff during discovery in *Singh II. (Id.* ¶ 68, 126); (6) Plaintiff asked Judge Strauss to remove *Singh II* to Federal Court, *(Id.* ¶ 83), and Judge Strauss refused to rule, instead asking Plaintiff to file a regular noticed motion. *(Id.* ¶ 117); (7) Judge Cowett never mentioned the California Government Code which prohibits destruction of evidence in any of her orders, despite Plaintiff's allegations that the provision was violated. *(Id.* ¶ 112); (8) Judge Strauss refused to "unearth attorney fraud" at Plaintiff's request, instead asking Plaintiff to file a regular noticed motion. *(Id.* ¶ 116, 118); (9) "Fraud and Deceit prevented Plaintiff's May10, 2007 [hearing regarding attorney fraud] from being heard." *(Id.* ¶ 120); (10) Defendant Brown and other defendants filed a proposed order granting the defendants' motion for stay in *Singh II, (Id.* ¶ 123); yet, Plaintiff did not receive a signed order. *(Id.* ¶ 126).

Clearly, all of these allegations relate solely to acts taken while discharging official and litigation-related duties. Thus, the AG Defendants and Judicial Defendants are afforded immunity for the accused conduct. While Plaintiff argues the complaint can be amended to state claims against

these Defendants in their "individual" capacities, the bar of immunity still would apply. *Bly-Magee*, 236 F.3d at 1018. Plaintiff points out that the court in *Bly-Magee* granted leave to amend the complaint to include unofficial acts by defendants that would not be subject to immunity. But in *Bly-Magee*, the plaintiff already had attempted to make such allegations in the original complaint. *Id.* at 1018. Accordingly, the court granted plaintiff an opportunity to remedy certain deficiencies in the complaint. *Id.* at 1019. Here, Plaintiff filed a complaint in excess of fifty pages detailing his encounters with Defendants, in which *all* of the matters complained about involve official acts and litigation-related conduct stemming from *Singh I* and *Singh II*. Any amendment would therefore be futile under the circumstances.[2]

III.
CONCLUSION

For these reasons, Defendants' motions are granted. The Complaint is dismissed with prejudice

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[2] The Court declines to address the balance of Defendants' arguments as the argument regarding immunity is dispositive. Plaintiff also submitted a proposed order, in which he seeks reinstatement to his position at the University and other relief. As the proposed order relates to matters before the state court in *Singh II*, this Court respectfully declines to grant the relief requested.

as to the AG Defendants and the Judicial Defendants.

IT IS SO ORDERED.
DATED: November 13, 2007

s/ Dana M. Sabraw
HON. DANA M. SABRAW
United States District Judge

Case 3:07-cv-01615-DMS-BLM Document 27
Filed 05/29/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAHUL SINGH,

Plaintiff,

vs.

ALEX MCDONALD,
CHARLES REED,
CYNTHIA AARON,
DAVID T. HAYHURST,
EDWARD G. BROWN,
JAMES MCINTYRE,
JEREMY GOLDEN,
JODI L. CLEESATTLE,
JOEL C. GOLDEN,
NANCY A. MARLIN,
PATRICIA COWETT,
RICHARD STRAUSS,
STEPHEN WEBER,
SUSAN WESTOVER,
Defendants.

CASE NO. 07-CV-1615 (DMS-BLM)

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS
[Docs. 12 & 14]

Pending before the Court are two motions to dismiss. The first motion is brought by Defendants Jeremy Golden and Joel C. Golden ("Golden Defendants"). The second motion is brought by

David T. Hayhurst, Nancy A. Marlin, Stephen L. Weber, and Charles Reed, all of whom are associated with California State University ("University Defendants"), and Susan Westover ("Westover"), who represented the University Defendants in prior actions brought by Plaintiff. The motions were taken under submission without oral argument on March 1, 2008, pursuant to Local Civil Rule 7.1(d)(1). Having carefully reviewed the matter, the Court grants both motions and dismisses the complaint with prejudice.

I.
BACKGROUND

On October 13, 2004, Plaintiff filed a lawsuit against the Board of Trustees of the California State University in San Diego Superior Court ("*Singh I*"). Plaintiff alleged he was denied tenure and promotion in his tenure track position at the University in retaliation for complaining about gender discrimination against an applicant in his department. At that time, Plaintiff was represented by the Golden Defendants. Plaintiff alleges he turned over key evidence to the Golden Defendants, including a "red Handbook" containing evidence supporting Plaintiff's claims. (Compl. ¶ 34). The Honorable Patricia Y. Cowett presided over the case. On October 13, 2005, Plaintiff signed an agreement settling all claims with the University. Thereafter, on December 23, 2005, Judge Cowett granted the University's motion over Plaintiff's objections to enforce the settlement agreement, and entered judgment.

On February 15, 2006, Plaintiff appealed the judgment. He submitted both an appellate brief and a document entitled, "Appellant Requesting Court Order to Catch Fraud Upon the Court." The latter document was returned unfiled. Justices Alex C. McDonald, James A. McIntyre, and Cynthia Aaron heard the appeal, and on April 17, 2007, the panel affirmed the trial court's judgment. Plaintiff's subsequent petition for rehearing and petition for review in the California Supreme Court were denied.

On February 21, 2007, while his appeal was pending, Plaintiff filed a second action in San Diego Superior Court against the Board of Trustees of California State University, Stephen L. Weber, Nancy A. Marlin, and David T. Hayhurst. ("*Singh II*"). The second action repeated the allegations of the first, and was assigned to The Honorable Richard E. Strauss. On May 23, 2007, the Attorney General's Office associated as co-counsel for the defendants in *Singh II*, and thereafter moved for judgment on the pleadings. The motion was granted on grounds that the claims were barred by (a) the doctrine of *res judicata*, and (b) the parties' underlying settlement agreement and release.

On August 14, 2007, Plaintiff filed the instant action with this Court alleging the same misconduct against the University Defendants as alleged in *Singh I* and *Singh II*. ("Complaint," Doc. 1). In addition, it contains allegations of fraudulent misconduct by the Golden Defendants in connection with their representation of Plaintiff, and by Defendant Westover in her representation of the

University in *Singh I*.[1] All moving Defendants argue Plaintiff's complaint fails to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). The University Defendants also argue the claim is barred by the *Rooker-Feldman* doctrine, res judicata, settlement and release, the Eleventh Amendment, prosecutorial immunity and litigation privilege.

II.
DISCUSSION

A Rule 12(b)(6) dismissal is proper where a plaintiff fails to state a claim upon which relief can be granted. Fed. R. Civ. Proc. 12(b)(6). In reviewing the complaint, the court construes allegations of material fact in the light most favorable to the nonmoving party. *Id.*

A. The University Defendants and Defendant Westover

Both the *Rooker-Feldman* doctrine and *res judicata* bar Plaintiff's claims against the University Defendants. The *Rooker-Feldman* doctrine bars subject matter jurisdiction in federal court over appeals of state court judgments. *Maldonado v. Harris*, 370 F.3d 945, 949-50 (9th Cir. 2004). The doctrine of *res judicata* requires a federal court to attribute to a state court judgment the same

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[1] Plaintiff alleges he hired Joel C. Golden to represent him in *Singh I*, but also alleges misconduct by attorney Jeremy Golden, whose role is unclear.

preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered. *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). Under California law, res judicata "precludes parties or their privies from relitigating a cause of action that has been finally determined by a court of competent jurisdiction." *Intri-Plex Techs., Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052-53 (9th Cir. 2007).

As with his state court complaints, Plaintiff seeks in the present action: reinstatement, compensatory and punitive damages, and equitable relief. (Compl. at 49). His prayer for relief arises out of the same facts alleged in his state court complaints. This is apparent from the face of the Complaint, which contains lengthy quotations from Plaintiff's state court pleadings. As these claims already have been adjudicated, the doctrine of *res judicata* prohibits this Court from adjudicating them anew.

Plaintiff alternatively argues this Court may "render review" of the state court decisions because his petitions for review in the California and United States Supreme Courts have been denied. (Compl. ¶ 82-83). The *Rooker-Feldman* doctrine, however, specifically prohibits this Court from reviewing the state court's adjudication of those claims. Accordingly, the claims against the University Defendants are dismissed with prejudice.

Prosecutorial immunity bars Plaintiff's claims against Defendant Westover. Attorneys representing state agencies have absolute immunity for their actions in representing the agencies in judicial and

adminstrative proceedings. *Butz v. Economou*, 438 U.S. 478, 517 (1978). Plaintiff's allegations against Westover all relate to her representation of the University Defendants in *Singh I*. Accordingly, the claims against Defendant Westover are dismissed with prejudice.

B. The Golden Defendants

The Court lacks subject matter jurisdiction over the claims asserted against the Golden Defendants. Plaintiff's claims against the Golden Defendants concern alleged misconduct during the course of their representation of Plaintiff in *Singh I*. Plaintiff has not alleged that "fraud upon the court," "stealing," and "tampering of evidence" regarding the Golden Defendants arise out of any federal question, nor has Plaintiff alleged diversity jurisdiction. Accordingly, jurisdiction is proper only if these claims form "part of the same case or controversy" as the claim over which the Court has original jurisdiction. *See* 28 U.S.C. § 1367(a). They do not.

While Plaintiff's Title VII claims arise out of the University's alleged unlawful termination of Plaintiff, the attorney-fraud claims arise out of the alleged mishandling of the subsequent lawsuit.[2] The

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[2] Plaintiff claims, "Attorney Golden's work in [*Singh I*] was tailored to be picked apart by Attorney Westover and Trial Court." (Compl 31). He further alleges that on summary judgment, Attorney Golden "discouraged Plaintiff from including a declaration[,]...cleverly left out key information including perjury and credibility issues of key administrators[, and] surprised and stunned Plaintiff by only giving an hours' notice before leaving town on

state law claims therefore do not form part of the same case or controversy as the federal Title VII claims. Since the Court lacks subject matter jurisdiction over the attorney-fraud claims, they are dismissed with prejudice.

III.
CONCLUSION

For these reasons, Defendants' motions are granted.[3] The Complaint is dismissed with prejudice as to all remaining Defendants. The Clerk shall terminate the case.

IT IS SO ORDERED.

DATED: May 29, 2008

s/ Dana M. Sabraw
HON. DANA M. SABRAW
United States District Judge

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vacation," thereby requiring Plaintiff to serve Defendant with summary judgment papers and "fraudulently abandoning" Plaintiff. (Compl. 36) Plaintiff alleges he fired Golden shortly thereafter, and when Golden returned Plaintiff's materials, he replaced Plaintiff's red Handbook with a "tampered Handbook favoring defendants." (Compl. 37).

[3] The Court declines to address the balance of Defendants' arguments as the matters discussed in this order are dispositive